



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8325238

Date: APR. 1, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as an account manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary possessed the experience required by the labor certification as of the priority date.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).¹ See section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. See section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national applies for an immigrant visa abroad or, if eligible, adjustment of status in the United States. See section 245 of the Act, 8 U.S.C. § 1255.

II. THE BENEFICIARY'S EXPERIENCE

The Director concluded that the Petitioner did not establish that the Beneficiary possessed the

¹ The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is September 7, 2018. See 8 C.F.R. § 204.5(d).

experience required by the labor certification as of the priority date.

A beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case, the labor certification requires a master's degree in accounting, finance, business administration, or closely related field, and 24 months of experience in any relevant occupation. Part H.14. also states that the two years of relevant work experience must include inventory management, cost management, accounting, bank management, tax preparation, administrative controls, payroll, and human resources.

The labor certification states that the Beneficiary has the following experience:

- Account manager with the Petitioner in [] CA, from March 1, 2011, to the date the labor certification was signed;
- Coordinator of internal controls with [] University in Mexico from May 10, 2010, to February 13, 2011; and
- Coordinator of payrolls with [] University in Mexico from March 31, 2003, to May 9, 2010.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. See 8 C.F.R. § 204.5(g)(1). The Petitioner submitted a letter with the initial petition confirming its employment of the Beneficiary since October 2013 and describing her duties. It also submitted her resume.

In response to the Director's request for evidence (RFE), the Petitioner submitted another letter from the Petitioner stating that it has employed the Beneficiary since September 30, 2013, and listing her current duties. It also submitted a letter from [] public accountant, dated August 19, 2019, stating that the Beneficiary served under his supervision as coordinator of financial and accounting services with Universidad [] in Mexico from May 2010 to February 2011. The letter lists her duties. Finally, the Petitioner submitted a letter dated August 27, 2019, with English translation, from the [] in Mexico stating that the Beneficiary worked as head of international control and accounting from April 2011 to August 2013. The letter lists her duties.

In his decision, the Director stated that the Beneficiary's experience with the Petitioner cannot be counted toward the 24 month requirement because the dates listed for her employment on the labor certification and letter from the Petitioner differ, and the Petitioner indicated on the labor certification that she did not gain any qualifying experience with the Petitioner.² Further, the Director determined that the letter from Universidad [] established approximately nine months of

² A labor certification employer cannot rely on experience that a foreign national gained with it, unless the experience was in a job substantially different than the offered position or the employer demonstrates the impracticality of training a U.S. worker for the offered position. 20 C.F.R. § 656.17(i)(3). For these purposes, a job is substantially different from an offered position if it requires performance of the same job duties less than 50 percent of the time. 20 C.F.R. § 656.17(i)(5)(ii).

experience, and that because the Beneficiary's experience with [REDACTED] was not listed on the labor certification, the experience does not count as qualifying experience. Thus, the Director concluded that the Petitioner did not establish that the Beneficiary possessed the 24 months of experience required by the labor certification as of the priority date. The Director stated that the Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).³ Doubt cast on any aspect of the Petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

On appeal, the Petitioner states that the labor certification contains a typographical error and that the Beneficiary began her employment with the Petitioner on September 30, 2013, not March 1, 2011. It states that the error was harmless and that other evidence in the record establishes her actual start date with the Petitioner. It further states that although failing to list employment experience on the labor certification may affect the subsequent credibility of an experience claim, the letter from [REDACTED] is independent, objective evidence of the Beneficiary's experience and establishes her qualifying employment there. Finally, the Petitioner asserts that it is not relying on the Beneficiary's experience with it as qualifying experience, and that the Petitioner's letter was submitted to confirm the Beneficiary's current employment, corroborate the Beneficiary's timeline, and further confirm her job duties.

We agree with the Director that the Petitioner has not established that the Beneficiary has the required experience for the offered job. The letter from the [REDACTED] describes employment that was omitted from the labor certification.⁴ The omission of the Beneficiary's claimed experience from the labor certification application casts doubt on the validity of the experience detailed in the letter. *See Matter of Leung*, 16 I&N Dec. 12, 14-15 (Distr. Dir. 1976), *disapp'd of on another ground by Matter of Lam*, 16 I&N Dec. 432 (BIA 1978) (finding a foreign national's claim of qualifying experience to lack credibility where he omitted the experience from a labor certification application).⁵ As indicated by the Director in his decision, given the discrepancies, the Petitioner must provide independent, objective evidence of the Beneficiary's experience with the [REDACTED]. *Matter of Ho*, 19 I&N Dec. at 591-92. On appeal, the Petitioner has not resolved the discrepancies in the record with independent, objective evidence of the Beneficiary's experience with the [REDACTED] such as paystubs, payroll records, tax returns, and/or personnel records. Thus, the Petitioner has not established that Beneficiary's purported experience with the [REDACTED] is qualifying experience for the offered job.

Further, the Beneficiary's experience with Universidad [REDACTED] detailed in the letter from [REDACTED] ran from May 2010 to February 2011, which is less than the required 24 months of experience for the offered job. The letter did not detail her purported experience with the university from March 2003 to May 2010. Finally, the Petitioner asserts on appeal that it is not relying on the Beneficiary's experience with the Petitioner as qualifying experience.

³ Independent and objective evidence of the Beneficiary's prior employment would be contemporaneous with that employment.

⁴ The experience described in the letter also overlaps with the Beneficiary's employment with the Petitioner listed on the labor certification.

⁵ The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In sum, the Petitioner has not established that the Beneficiary possessed the 24 months of experience required by the labor certification as of the priority date.

III. ABILITY TO PAY

The record does not contain regulatory required evidence of the Petitioner's ability to pay the proffered wage from the priority date on September 7, 2018, and continuing until the beneficiary obtains lawful permanent residence.⁶ The regulation at 8 C.F.R. § 204.5(g)(2) requires that "[e]vidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements."

The Petitioner submitted regulatory-prescribed evidence of its ability to pay the proffered wage in 2017. However, the record does not contain regulatory-prescribed evidence of its ability to pay for 2018. Without this regulatory-required evidence, we cannot affirmatively find that the Petitioner has the continuing ability to pay the proffered wage from the priority date. In any future proceedings, the Petitioner must establish its ability to pay the proffered wage from 2018 onward.

ORDER: The appeal is dismissed.

⁶ The annual proffered wage is \$87,152.